CALIFORNIA STATE BOARD OF EQUALIZATION

CURRENT LEGAL DIGEST NO. 1064

July 21, 2004

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Delete Annotation 225.0077, **Optical Devices** (7/16/96) because it conflicts with changes to Regulation 1592.

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Delete Annotation 305.0028.500, **Pre-paid Taxes by Indian Retailer to Distributors of Fuel** (8/19/97) because it is outdated and inaccurate pursuant to changes to the Motor Vehicle Fuel Tax Law and the Diesel Fuel Tax Law.

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320.0205 **Relief from Penalty Billed Under Section 6829**. A corporation was assessed a penalty for filing a late return. The same penalty was later assessed to an individual as the responsible party under Section 6829, personal liability of corporate officer. The responsible party then submitted a request for relief of penalty pursuant to Section 6592, excusable delay, for both the corporation and for himself as the responsible party.

Section 6829 imposes, under certain circumstances, a liability on corporate officers and other responsible persons for the unpaid liabilities of various defunct business entities. This section is not a "penalty" provision subject to the relief provisions of Section 6592 and is not listed as one of the statutes with respect to which relief may be obtained under Section 6592. Instead Section 6829 holds such responsible persons dually liable because of their own conduct in failing to cause the defunct business entity to be in compliance with the reporting and payment requirements of the Sales and Use Tax Law. Therefore, the Board cannot grant relief from a Section 6829 liability pursuant to Section 6592.

However, because Section 6829 establishes a dual liability that is contingent on, and derives from, the liability of the subject defunct business entity, if the Board relieves a penalty imposed on that business entity pursuant to Section 6592 and if this penalty amount was included in the responsible person's liability under Section 6829, the responsible person's liability should consequently be reduced by the same amount. 3/29/04. (2004-2).

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362.0135 **Sale of a New Mobilehome Installed on an Indian Reservation.** A mobilehome dealer (dealer) sold a new mobilehome to an Indian for residency and had a subcontractor install the mobilehome on an Indian reservation as required by the sales contract. The mobilehome was installed onto a nonpermanent foundation, i.e., piers or jacks and pads. The dealer claims that the sale of the new mobilehome should be excluded from the application of

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tax because the customer purchasing the mobilehome is an Indian residing on a reservation and requests a refund of the tax it paid.

The gross receipts for the sale of a mobilehome are subject to tax, as are other sales of tangible personal property, unless the sale is exempt, or is a sale of a new mobilehome for occupancy as a residence. (Regulation 1610.2). Under subdivision 1610.2(b)(3)(B), a mobilehome dealer is the retailer-consumer of any new mobilehome sold to a customer for occupancy as a residence if the transaction would otherwise have been subject to the sales tax and the mobilehome is thereafter subject to local property taxation. Retailer-consumer status applies only if both the requirements of Regulation 1610.2(b)(3)(B) above are met.

If a sale is excluded from the application of tax, there is no reason to determine whether a dealer is a retailer-consumer with regard to that sale. If the dealer delivered the mobilehome to the reservation with its own trucks, title to the mobilehome transferred to the Indian purchaser on the reservation pursuant to Regulation 1628(b)(3)(D) and the sale is excluded from tax pursuant to Regulation 1616(d)(4)(A). However, if the mobilehome was delivered to an independent carrier who transported it to the reservation without delivery terms specifying delivery F.O.B. reservation, title to the mobilehome passed to the Indian purchaser off the reservation and tax applied to the sale. In the latter situation, the first requirement of Regulation 1610.2(b)(3)(B) is met, i.e., the sale is otherwise subject to the sales tax.

The second requirement, that the mobilehome be subject to property tax, is fulfilled when the mobilehome is the *type* of property subject to local property tax, regardless of the fact that the mobilehome is excluded from local property tax by applicable law concerning the taxability of Indian personal property on Indian reservations. Therefore, under Regulation 1610.2(b)(3), a dealer qualifies as a retailer-consumer in a taxable sale of a new mobilehome for occupancy as a residence when that mobilehome is sold to an Indian purchaser for installation on a temporary foundation on a reservation and the sale occurs off of the reservation. Conforming to Regulation 1610.2(b)(3)(B)1., the dealer must declare and pay tax based on 75 percent of its purchase price of the new mobilehome and 75 percent of the subcontractor's labor charge for installing the mobilehome. 2/5/04. (2004-2).

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Delete Annotation 430.0377, **Illustrations** (2/24/92), because it is inconsistent with the revision of Regulation 1540.

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Revise annotation 440.0640 **Salt and Lye.** Salt used for preserving olives before processing and lye used in processing olives are taxable. The final salt brine is exempt if it remains with the olives when they are sold. 11/9/55. (Am. 2004-2).

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Delete Annotation 440.2160, Salt and Lye (11/9/55) because it is a duplicate of annotation 440.0640.

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475.0168.185 **Purchases of Light Rail Vehicles Not Qualifying for Exemption from Tax**. A taxpayer wants to purchase vehicles for use as light rail transportation. Taxpayer has purchased a rail line and simultaneously granted back to the seller the exclusive right to use that rail line. The taxpayer does not currently provide commuter rail service on or over the rail line it allegedly purchased from the seller. Taxpayer claims that its purchases of light rail vehicles are exempt from sales tax under the Railroad Revitalization and Regulatory Reform Act of 1976 (4-R Act) and taxpayer should be allowed to issue exemption certificates to its vendors for these purchases.

Revenue and Taxation Code section 6352 provides an exemption for sales of tangible personal property that California is prohibited from taxing under the laws of the United States. The federal law at issue, the 4-R Act, was interpreted by the Board in the memorandum opinion of *Bombardier, Inc.* (Sept. 1, 1999) hereafter *Bombardier*.

In *Bombardier*, the Board held that the 4-R Act's protection from discrimination operates on behalf of commuter rail carriers operating on portions of the interstate rail system inside California because such commuter rail carriers are "subject to the jurisdiction" of the federal Surface Transportation Board (STB). Under the Board's holding in *Bombardier*, a rail carrier cannot qualify for a "4-R Act" exemption under Section 6352 unless, among other things, the rail carrier seeking the exemption is operating on a portion of the interstate rail system that is subject to the jurisdiction of the STB.

Taxpayer has not established that it is a rail carrier subject to the jurisdiction of the STB nor that it is currently providing commuter rail service on and over the rail line it purchased. The documentation provided by the taxpayer merely provides that it might at some future date be able to operate as a commuter rail service on and over that particular rail line it purchased from the seller under certain circumstances. Therefore, taxpayer should not issue exemption certificates to its vendors of light rail vehicles. 1/26/04. (2004-2).

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